



Crl.M.P.No.12005 of 2022 in Crl.A.No.431 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.M.P.No.12005 of 2022 in Crl.A.No.431 of 2022

Kundal @ Murugavel

... Petitioner

Versus

State rep. by its
Inspector of Police,
All Women Police Station,
Orathur, Sethiathoppu.
(Crime No.118 of 2015)

... Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 389(1) of the Code of Criminal Procedure to suspend the sentence imposed on the petitioner in Spl.S.C.No.02 of 2018 on the file of learned Mahila Court, Cuddalore, dated 06.03.2019 and enlarge the petitioner on bail.

For Petitioner : Mr.M.Vijaya Kumar

For Respondent : Mr.S.Vinoth Kumar
Government Advocate (Crl. Side)



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ORDER

WEB COPY This Criminal Miscellaneous Petition is to suspend the sentence imposed on the petitioner in Spl.S.C.No.02 of 2018 on the file of Mahila Court, Cuddalore, dated 06.03.2019 and enlarge the petitioner on bail.

2. Heard the learned Counsel for the petitioner and learned Government Advocate (Criminal Side) for the respondent.

3. The learned Counsel for the petitioner would submit that this is a case of a consensual physical relationship when the petitioner, even though was a married man, was having disputes and was not living with his wife. Under the circumstances, there was an affair between the petitioner/accused, who was aged 29 years and girl was aged 17 years. Therefore, the learned Counsel for the petitioner would submit that the Trial Court ought not to have convicted the petitioner for the offence under Section 6 of POCSO Act, 2012.

4. Per contra, the learned Government Advocate (Crl. Side) would submit that in any event, the prosecution has proved that the girl is less than 18 years and the petitioner was a married man at the time of the alleged affair itself.



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5. I have considered the rival submissions made on either side and perused the material records of the case. It is now reported that the victim child, after attaining the age of majority, is married to some third person and is living with that person. Considering the fact that the petitioner is in prison from 06.03.2019 and having undergone a specific portion of the punishment and considering the fact that it may take further while for this Court to take up this appeal, I am of the view that this is a fit case for grant of suspension of sentence pending disposal of the appeal and accordingly, the sentence is suspended on the following conditions:-

(a) the petitioner is ordered to be released on bail, on his executing a bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) with two sureties each for a like sum to the satisfaction of the Trial Court;

(b) the petitioner and the sureties shall affix their photographs and left thumb impressions in the surety bonds and the learned Judge may obtain a copy of their Aadhar Cards or Bank Pass books to ensure their identities;

(c) the petitioner shall appear before the Trial Court on the first working day of every English Calendar Month at 10.30 A.M until the disposal of the Criminal Appeal and if he is not able to appear before the Trial Court on any day, he shall make arrangements to file an application under Section 317 of Cr.P.C., and shall appear before the Trial Court on any other day in *lieu* of the



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date of his absence, as directed by the Trial Court.

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D.BHARATHA CHAKRAVARTHY. J.,

grs

6. This Criminal Miscellaneous Petition is ordered accordingly.

02.08.2022

Index : yes/no

Internet : yes/no

Speaking order/Non-speaking order

grs

To

1. The Mahila Court,
Cuddalore.
2. The Public Prosecutor,
High Court of Madras.
3. The Superintendent,
Central Prison,
Cuddalore.
4. The Inspector of Police,
All Women Police Station,
Orathur, Sethiathoppu.

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